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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Brian R. Gareau

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Caterpillar Inc.  
Intellectual Property Dept.  
AB 6490  
100 N.E. Adams Street  
PEORIA, IL 61629-6490

EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT

PAPER NUMBER

3692

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/852,810	<b>Applicant(s)</b> GAREAU ET AL.	
	<b>Examiner</b> Susanna M. Diaz	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007 and 06 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 16-19, 23-26, 37, 39, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 16-19, 23-26, 37, 39, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/5/07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This final Office action is responsive to Applicant's amendment filed March 29, 2007 and response to the requirement for information filed December 6, 2007.

Claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 have been considered but are moot in view of the new ground(s) of rejection, which are necessitated by Applicant's claim amendments. All previously pending rejections are withdrawn in response to Applicant's claim amendments.

### ***Claim Objections***

3. Claim 39 is objected to because of the following informalities:

Claim 39, line 1: Since the body of the claim recites various means-plus-function elements, it appears that claim 39 should be an apparatus/system claim instead of a method claim.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harte et al. ("Quality Improvement in a Safety, Engineering and Management Consultancy – Part 2") in view of Official Notice.

Harte discloses a method of assessing a culture of an organization for making improvements thereon (¶¶ 1, 4), comprising the steps of:

[Claim 1] collecting responses from members of the organization (¶¶ 1, 4); and performing an assessment process (¶¶ 6-7) including:

compiling the responses into a data format (¶¶ 6-7 – The responses are placed into a data format that is statistically meaningful),

sorting the compiled responses to identify a theme based on the response having a highest frequency of occurrence (¶¶ 7-36 – The most significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is effectively indicative of a frequency of occurrence of each particular response combination),

generating a report based on the identified theme (¶¶ 7-36, ¶ 13 in particular),

selecting a first action corresponding to the identified theme in reply to receiving the report (¶¶ 7-36),

collecting responses from members of the organization reflecting a performance of implementing the first action in the organization (¶¶ 22-37), and

sorting the collected responses to identify an effect of the implemented first action on the organization based on the response having a highest frequency of occurrence (¶¶ 7-36, 42 – The most significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is effectively indicative of a frequency of occurrence of each particular response combination);

[Claim 2] wherein the step of collecting responses further includes:

receiving data responses reflecting at least one individual interview session with at least one of the members (¶¶ 4, 42);

receiving data responses reflecting at least one focus group meeting associated with at least one of the members (¶¶ 4, 42); and

[Claim 3] wherein the step of compiling the responses includes:

separating the collected responses into groups (¶¶ 4, 7-36);

[Claim 4] wherein generating the report includes:

identifying ineffectual communication between employees and managers of the organization; and generating the report to include the identified ineffectual communication as the theme (¶¶ 12, 13, 18, 22, 26, 29);

[Claim 7] wherein performing the assessment process includes:

separating the collected responses into sets of responses (¶¶ 7-36); and

identifying a theme for each set of responses based on a frequency of occurrences of information included in each set of responses (¶¶ 7-36, 42 – The most

significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is effectively indicative of a frequency of occurrence of each particular response combination);

[Claim 8] identifying a theme for each set of responses based on responses to a set of qualitative questions (¶¶ 4, 7-36);

[Claim 41] wherein the first set of members are employees of the organization and the second set of members include managers of the organization (Discussions to obtain feedback are held among managers and staff, i.e., employees (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26));

[Claim 42] analyzing the collected data to select a second action to implement in the organization based on the effect of the implemented first action (¶¶ 22-26 – Follow-up meetings are conducted to reach further conclusions regarding potential approaches to improvement within the organization).

As per claim 1, while Harte discloses selecting a first action corresponding to the identified theme in reply to receiving the report (¶¶ 7-36), Harte does not explicitly disclose that such a step is performed "automatically." If "automatically" is interpreted to simply mean that the step of selecting is performed in immediate response to previous steps, then Harte does perform the step of "automatically" selecting a first action

corresponding to the identified theme in reply to receiving the report since Harte performs this step in response to receiving responses from members of the organization. However, if “automatically” is interpreted as through use of a computer, then Harte does not expressly disclose that the step of selecting a first action corresponding to the identified theme in reply to receiving the report is performed automatically. Official Notice is taken that it was old and well-known in the art of data processing to utilize a computer to perform calculations, data gathering, data analysis, and report generation. The use of a computer facilitates more efficient, rapid, and less erroneous computations, data gathering, analysis, and reporting (as compared to human-performed operations). Since Harte analyzes statistical data, which often tends to require more involved mathematical calculations, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harte such that any or all of the recited steps are performed by a computer in order to facilitate more efficient, rapid, and less erroneous computations, data gathering, analysis, and reporting (as compared to human-performed operations). Further, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to automate the manual steps of Harte since it has generally been recognized that broadly providing an automatic means to place a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner* 262 F.2d 91, 95 120 USPQ 193, 194 (CCPA 1958). As a matter of fact, using a computer to perform steps that the prior art discloses as commonly performed manually is simply “the adaptation of an old idea or invention...using newer technology that is

commonly available and understood in the art...,” as explained in *Leapfrog Enterprises, Inc. v. Fischer Price, Inc.*, 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007) at 1691.

The Leapfrog decision “found it obvious to combine the Bevan device [an earlier, more basic prior art device] with the SSR [a system with more modern electronic components] to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost.” (*Leapfrog*, at 1691) This decision further supports the Examiner's assertion regarding the obviousness of performing manual steps using a computer, as discussed above.

Regarding claim 2, Harke discloses receiving data responses reflecting at least one individual interview session with at least one of the members and data responses reflecting at least one focus group meeting associated with at least one of the members (¶¶ 4, 42), yet Harke does not explicitly disclose receiving data responses associated with at least one physical walk around session with at least one of the members. However, Official Notice is taken that it was old and well-known in the art of assessing organizations to perform part of an assessment using data responses associated with a physical walk around session with at least one member of the organization. Walking around an organization gives an evaluator a more hands-on and comprehensive view of what is truly going on within the organization. Since Harke seeks to perform total quality management to address issues associated with organizational culture (¶ 1), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke to receive data responses associated

with at least one physical walk around session with at least one of the members in order to give an evaluator a more hands-on and comprehensive view of what is truly going on within the organization.

Regarding claim 5, Harke does not explicitly disclose that selecting the first action includes generating content on a Web page associated with the organization, that is accessible by a first set and a second set of members of the organization; however, Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to communicate information to various people via a Web page. The use of Web pages to communicate information is a very fast and economical way of transmitting information to people located in various places, including locations throughout the world. Discussions to obtain feedback are held among managers and staff (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26); therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke such that selecting the first action includes generating content on a Web page associated with the organization, that is accessible by a first set and a second set of members of the organization in order to promote improved communications among managers and staff in a fast and economical manner.

Regarding claim 6, Harke does not explicitly disclose that the responses include data values associated with sets of quantitative questions and the method further includes determining an average data value for a first set of quantitative questions,

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determining an average data value for a second set of quantitative questions, and picking a theme based on the higher average data value. However, Harke does perform qualitative analysis to yield quantifiable, meaningful values (¶¶ 7-13). Harke recognizes results that show "a range of responses varying from very positive to negative predictions about the future success of the company." (¶ 21) Discussions to obtain feedback are held among managers and staff (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26) Furthermore, Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to average quantitative responses from each of various groups being compared in order to assess a representative opinion of each respective group. In Harke's environment, this would be implemented as a comparison of the average feedback provided by the staff versus the feedback provided by managers. Such an analysis would differentiate the perception of organizational culture between managers and staff, i.e., employees. In evaluations where a higher average feedback value is representative of an issue of greater importance or an issue requiring greater attention, it would be useful to pay closer attention to issues to which higher average feedback values are attributed. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke such that the responses include data values associated with sets of quantitative questions and the method further includes determining an average data value for a first set of quantitative questions, determining an average data value for a second set of quantitative questions,

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and picking a theme based on the higher average data value in order to provide greater insight into the differences in perception of organizational culture between managers and staff/employees and which issues are deemed more important to each respective group of organizational members. This comprehensive assessment of the opinions of managers versus staff/employees will also likely serve to foster mutual understanding and improve communication among both groups of organizational members, thereby addressing the issue of communication, consistently raised as an area in need of improvement in Harke.

[Claims 9-12]        Claims 9-12 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claims 16-19]       Claims 16-19 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claims 23-26]       Claims 23-26 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claim 37] Claim 37 recites limitations already addressed by the rejection of claims 1-4 and 42 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claim 39] Claim 39 recites limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on the attached Notice of References Cited form (and not applied in the art rejection) discuss various statistical usages of averages in feedback evaluation systems.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Susanna M. Diaz/  
Primary Examiner, Art Unit 3692  
March 31, 2008